STATE OF COLORADO

OFFICE OF CONSUMER COUNSEL
Department of Regulatory Agencies

1580 Logan St., Suite 610
Denver, CO 80203
Phone: (303) 894-2121
FAX: (303) 894-2117

Kenneth V. Reif
Director

Roy Romer
Governor

Joseph A. Garcia
Executive Director

November 12, 1998

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M. St. N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 98-170

Dear Ms. Salas:

Enclosed herewith for filing are the original and four (4) copies of the Comments of the National Association of State Utility Consumer Advocates in the above captioned proceeding.

Sincerely yours,

Kenneth V. Reif
Director, Colorado Office of Consumer Counsel
Member, NASUCA

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 98-170
Truth-in-Billing and Billing Format	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

The National Association of State Utility Consumer Advocates (NASUCA) appreciates the opportunity to comment on the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NOPR), In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, issued on September 17, 1998, 63 F.R. 55077. This initiative by the FCC, if finalized in the form of an enforceable rule as recommended in these comments, is likely to have a significant impact on preventing customer confusion, and certain unfair trade practices, particularly slamming and cramming.

NASUCA is an association of 42 consumer advocates in 39 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

I. Executive Summary

Our comments address the specific proposals raised in the Commission's NOPR and discuss the implications of the FCC's proposals. Further, NASUCA suggests certain specific actions that the FCC should take concerning disclosure of interstate charges that appear on telephone bills and a methodology for furthering the dialogue with state regulators, local exchange carriers and consumer advocates about the format of and disclosures in bills issued by local telephone companies. NASUCA strongly supports regulatory action to initiate known and successful consumer protection techniques for the telephone industry. NASUCA also urges the FCC to consider the body of existing state regulatory consumer protection policies and programs regarding disclosures and billing as a "floor" and not a "ceiling." The rapid increase in cramming and slamming complaints calls for aggressive and effective disclosure requirements on both the state and federal levels.

Specifically, NASUCA urges the FCC to propose a rule that includes the following minimum requirements:

- First, charges for certain services, some of which are not even telecommunications services, are described in obscure ways and are sometimes interspersed with toll charges. These are the typical sources of cramming complaints from consumers. Such charges should be clearly distinguished by an identifying symbol from other basic local service and long distance charges and, preferably, should be listed on a separate page of the bill.
- Second, we support the Commission's proposal to include a single page summary of the current status of the customer's services including the presubscribed interstate toll carrier; the presubscribed intrastate toll carrier, if different; the presubscribed local exchange carrier; other service providers; and whether preferred carrier freezes or other blocking mechanisms have been implemented.

- Third, we support the proposed "Status Change" page to alert customers to changes in their carrier or services. Such changes should include changes in a presubscribed carrier, the existence of a new service provider for whom charges are being billed for the first time, changes in any carrier or PC freeze status or blocking mechanism, and explanations of any line item charges. The Status Change page, to be most effective, should appear as the first page of the bill.
- It is vital that the customer's bill identify the company that sold the customer the service or item in question. It is insufficient and misleading to list the billing agent, an entity which may be unknown to the customer, who is often unable to provide information about the transaction leading to the charges.
- Any service billed to the customer must be described using plain and unambiguous language, in terms that are generally understood by an ordinary customer. No charge may be identified as "miscellaneous" or described by ambiguous terms that may confuse customers or suggest that the service or product is regulated when it is not.
- NASUCA supports categorizing charges as those which, if unpaid, could result in termination of basic service; however, the terms "deniable" and "undeniable" are not easily understood by average consumers. NOPR, ¶24. A clear disclosure that a consumer's basic service cannot be terminated if non-basic or unregulated charges are unpaid would be preferable.
- The FCC should rule that interstate charges cannot be included in any disconnection

notice that contains an overdue amount for local exchange services. The FCC should accompany its regulation with a recommendation that the states, which have not already done so, adopt rules prohibiting disconnection of basic local services for nonpayment of non-basic charges, such as intrastate toll charges, or other unregulated charges. We also urge the Commission to adopt a rule that requires interexchange carriers to send separate cancellation notices to their customers for nonpayment or other default as defined in their contracts with customers.

- The FCC notes the numerous complaints resulting from line items on telephone bills for access charges and universal service charges. NASUCA strongly supports FCC initiatives to address the issue of how customers are informed about such charges at the time of sign-up for toll service, on website pages, and in advertising as well as on customer bills. The FCC certainly has jurisdiction over these charges and can regulate how they appear on customer bills or are otherwise described so as to prevent customer confusion or deception. NASUCA is concerned that these charges often overstate the average costs of the billing carrier. The FCC should require carriers to disclose the actual average per line universal service and access charges on the same page as the customer's individual statement of universal service and access charges. Additionally, the FCC should require companies to disclose such charges with certain words and phrases that the FCC determines to be factually correct or not deceptive.
- The telecommunications companies should, in the course of telephonic sales and on each

telephone bill, clearly and accurately describe all services ordered by the customer and itemize all fees, charges, and surcharges generated by the order. Providers should be prohibited from characterizing a universal service surcharge as a "federally mandated" or "FCC-approved" charge.

- The company should issue a "Terms of Service" document to the customer within 3 days of receiving the customer's authorization to select the provider for any telecommunications service.
- The service provider must disclose (and provide to the billing entity) the average cents per minute paid by the customer for any toll service that appears on the customer's monthly bill. This will require a calculation of the total dollars billed to the customer for toll services divided by the minutes billed to the customer for their toll calls by each provider for that billing period. This calculation should include any additional fees or charges imposed by the provider, including any separate fees listed for access charges or universal service fees. This will result in a cents per minute charge that customers can compare among telephone companies, thus enhancing the development of a competitive market. This calculation will appear on each provider's bill page included with the LEC bill as well as any bill issued by a provider directly to a customer.
- Similar to Wisconsin law, the FCC should prohibit a telephone provider from engaging in negative option billing or negative enrollment of telecommunications services.
- The telephone service provider who uses a LEC to bill on their behalf should demonstrate

their compliance with these rules and provide the internal procedures and documents to the LEC that are designed to demonstrate compliance with these provisions prior to the finalization of the billing and collection contract.

- Finally, we strongly support the exercise of the FCC's leadership in this area and urge that the FCC, NARUC and NASUCA sponsor a dialogue with all interested parties to mutually learn and explore consumer protection policies and programs that should be implemented by both state and federal officials.

II. Introduction.

In general, NASUCA agrees with the Commission's overall motivation for this NOPR, that is, to remedy "...the failure of telephone bills to provide end-user customers with necessary information in a clear and conspicuous manner, so as to allow the consumer to understand readily the precise nature of charges appearing on these bills." NOPR, ¶2. We also fully support the Commission's observation that, "...[C]onsumers must have adequate information about the services they are receiving, and the alternatives available to them, if they are to reap the benefits of a competitive market." NOPR, ¶2.

Our comments address the specific proposals raised in the Commission's NOPR and discuss the implications of the FCC's proposals. Further, NASUCA suggests certain specific actions that the FCC should take concerning disclosure of interstate charges that appear on telephone bills and a methodology for furthering the dialogue with state regulators, local exchange carriers and consumer advocates about the format of and disclosures in bills issued by local telephone companies. NASUCA strongly supports regulatory action to initiate known and successful consumer protection techniques for the telephone industry. NASUCA also urges the FCC to consider the body of existing state regulatory consumer protection policies and programs regarding disclosures and billing as a "floor" and not a "ceiling." The rapid increase in cramming and slamming complaints calls for aggressive and effective disclosure requirements on both the state and federal levels. Such requirements can be imposed by the FCC without disturbing cramming protections or guidelines already in place or under consideration in some states and could result in even stronger state anticramming measures.

The move to competition in the telephone industry has been accompanied by price deregulation and a certain degree of forbearance of regulatory action by the FCC. Competition has also brought deceptive and fraudulent practices by some providers. Recent enforcement actions have been insufficient to assure consumers that they may participate in the competitive market without encountering fraud and deceit by some providers. It is not our intent here to cover ancient ground in the fight to prevent deceptive 1-900 charges, slamming, cramming, and outrageous charges at certain pay phones by alternative operator services. However, it only takes a cursory look at these developments (and the Congressional response to them through directives to the FCC) to conclude that price deregulation is not the only regulatory objective to be achieved in the creation of a competitive market.

The long-established and valuable list of regulatory tools for consumer protection within competitive industries contained in the Federal Trade Commission Act, the Truth in Lending Act, Food Labeling Act, Fair Debt Collection Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, and others, should be taken into account and made a primary focus of the FCC in its oversight and regulation of the telephone industry. The telecommunications industry is no exception to the general rule that competition without consumer protection allows certain competitors to practice fraud and perpetrate unfair and deceptive practices on vulnerable customers. Consumer protection and universal service are the goals of regulation in competitive industries where price is not a focus. The creation of stable and competitively neutral rules establishes the basis for a functional market. It is just as important that the FCC act to protect customers from unfair and deceptive practices as it is to prevent the dominance of one or two market players over other competitors. An active approach to this type of regulation of the competitive market is necessary to ensure that the competitive market develops and that the fruits of competition are available to all customers.

The Telecommunications Act gives the FCC the necessary tools to pursue this agenda. The Truth-in-Billing NOPR is an excellent initiative to continue the process of fostering robust competition by enhancing the flow of full and truthful information to customers.

III. Why Cramming Occurs.

Before commenting on the specific NOPR proposals, it is important to understand the dynamics of the customer-provider relationship and why cramming occurs. Cramming is the practice of charging for services that have either not been ordered or have been sold in a deceptive manner, such that the customer is not aware of the nature or price of the service. Cramming can occur when a customer fills out an entry form for a lottery or prize and does not realize that the form also operates as a commitment to buy a "club" or "voicemail" service. Cramming is sometimes associated with 1-900 calls that begin as "free" 1-800 calls. It can also occur when a service provider bills customers for services they never ordered or agreed to purchase.

Cramming occurs primarily because it is hard to detect and consequently it is profitable. Cramming goes undetected, in part, because customers lack experience in dealing with competitive telephone services. More importantly, cramming flourishes because the charges for these competitive services are sometimes inconspicuously or vaguely described in local exchange telephone company bills. Most customers pay their telephone bills in full every month, often without scrutinizing them, because they assume that the charges on their local telephone bill are regulated by either state or federal authorities. In addition, bills often lack vital information like the name, telephone number, and mailing address of the provider. Without this information, consumers are greatly disadvantaged when it comes to disputing unauthorized charges.

The local exchange carriers, particularly the large Regional Bell Operating Companies (BOCs), sign Billing and Collection contracts to bill their local exchange customers for charges submitted by other telephone service providers. Customers believe their local telephone bills contain regulated charges even though these bills, by means of the billing and collection contracts, now contain unregulated interstate and intrastate charges.

If a customer does not pay the entire telephone bill in full each month, the local telephone company may initiate collection action, beginning with a notice of disconnection to the customer for *any* amount that is overdue. The overdue amount is usually undifferentiated in that it includes both local exchange and intrastate charges, as well as interstate charges not regulated by the state public utility commission. The local telephone company employees are trained to collect the entire balance due and to emphasize to customers in many states that *any* charges imposed on their telephone number must be paid to avoid disconnection. Even where payment arrangements are offered, they are typically made for the entire unpaid balance. To make matters worse, customers are not always affirmatively informed, for example, that they will not be disconnected for the failure to pay 1-900 charges.

Unless a state commission has prohibited the practice, the local exchange company will disconnect customers for failure to pay long distance or unregulated charges appearing on their bill.[1] Customers, therefore, are under the understandable impression that they must pay all these charges to avoid losing their local telephone service.

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[1] In a growing trend, several states now prevent local telephone companies from disconnecting local service for nonpayment of long distance or other unregulated charges: Pennsylvania, Iowa, Colorado, Ohio, California, Oregon, Arizona, Minnesota, Washington, and New York. However, in some of these states the telephone company can issue a disconnection notice that includes unregulated charges even though the company cannot in fact disconnect the customer for nonpayment of these charges.

Telephone service providers know that customers are unlikely to closely examine the charges and , even if they notice the charges, they are likely to pay them because they fear the loss of their local phone service or they find that the process to dispute the charges is time-consuming and often unsuccessful due to the inability to reach the provider listed on their bill. Furthermore, the local telephone company's revenues from these contracts with alternative providers depend in part on the percentage of billed revenues collected from customers, thus creating a disincentive to resolve invalid charges in favor of customers. Until cramming and slamming are no longer profitable, these practices will continue to proliferate. Regulatory action enabling consumers to more easily defend themselves can further the objective of rendering these deceptive practices less profitable.

IV. Specific FCC Proposals to Alleviate Cramming and Other Improper Practices.

Our comments reflect the FCC's organization of its discussion and proposals for consideration. Our comments also reflect our preliminary views with respect to the jurisdiction of the FCC to address cramming (and other unfair and deceptive practices) by interexchange providers. State commissions have authority over the intrastate activities of local exchange telephone companies and can regulate their rates, service quality and other aspects of a public service company's "safe, adequate, reasonable and proper service."[2] Thus, the state commission can regulate the billing and collection practices of local exchange telephone companies directed

[2] The Maryland provision is typical: Maryland Code, Pub. Serv. Comm. Law, §78-73.

to customers, even if they are seeking to collect for interstate services.[3] The FCC has the authority to issue directives to interstate service providers pursuant to Title II of the Telecommunications Act concerning the manner in which interstate charges are described or disclosed to customers. It would then be up to the interstate service provider to either issue bills directly to its customers that conformed to these directives or to negotiate billing and collection contracts with local exchange companies that require that the local telephone company's accommodate these federal requirements. However, it would probably be inappropriate for the FCC to regulate the bill format of the local exchange company's bill directly because this has been the historical province of state regulation.

A. **Organization of the Bill.** NOPR, ¶¶44-46.

NASUCA fully supports the Commission's overall conclusion that telephone bills should be "organized to be readable and to present important information clearly and conspicuously." NOPR, ¶ 16. First, charges for certain services, some of which are not even telecommunications services, are described in obscure ways and are sometimes interspersed with toll charges. These

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[3] The FCC has always deferred to the exclusive state authority over the local exchange telephone company's billing and collection practices vis a vis the ultimate retail consumer. In Re Public Service Commission of Maryland, 2 FCC Rcd 1998, 2002 (1987); Maryland Public Service Commission v. Federal Communications Commission, 114 P.U.R. 4th 383 (1990).

are the typical sources of cramming complaints from consumers. Such charges should be clearly distinguished by an identifying symbol from other basic local service and long distance charges and, preferably, should be listed on a separate page of the bill.

Second, we support the Commission's proposal to include a single page summary of the current status of the customer's services including the presubscribed interstate toll carrier; the presubscribed intrastate toll carrier, if different; the presubscribed local exchange carrier; other service providers; and whether preferred carrier freezes or other blocking mechanisms have been implemented. Such a summary, particularly if in a required standardized format with charges calculated in a consistent manner by all providers, could be an invaluable tool to consumers in detecting unwanted or unauthorized charges -- much as standardized annual percentage rates have enabled consumers to compare credit providers and standardized nutritional labeling has facilitated food product comparisons.

The NOPR's proposed summary page includes under "(4) any other service providers": "those providing non-telecommunications related services, for whom charges are being billed." NOPR, ¶18. NASUCA does not support inclusion of non-telecommunications related services on telephone bills. Telephone bills are already notoriously lengthy and complex. Inclusion of other unrelated charges will only add unnecessary length and complexity to these bills, stymying meaningful consumer review of the charges. Furthermore, the inclusion of non-telecommunications services on a bill issued by a local exchange telephone company heightens the customer's confusion and potential for deceptive practice by providers who seek to obtain payment for their services by "hiding" them in a bill that contains regulated telephone services. We urge the Commission to prohibit the listing of third party billing aggregators altogether. Listing the billing aggregators only serves to confuse and mislead customers. These aggregators are usually not the party who has sold a service to the customer; they are agents of the seller. Therefore, there is no reason to include their identity on the customer's bill.

Third, we support the proposed "Status Change" page to alert customers to changes in their carrier or services. Such changes should include changes in a presubscribed carrier, the existence of a new service provider for whom charges are being billed for the first time, changes in any carrier or PC freeze status or blocking mechanism, and explanations of any line item charges. The Status Change page, to be most effective, should appear as the first page of the bill. In addition to being conspicuously disclosed on the Status Change page, new or changed carriers or services should be clearly and conspicuously marked with an identifying symbol elsewhere in the bill. A requirement for status changes to be shown on a separate page could encourage customer vigilance and increase the likelihood that unauthorized charges will be promptly discovered. Alternatively, the status changes could be the first or most prominent item in the single page showing the current status of service. Either way, customers would have a new informational tool to defend themselves against fraudulent or deceptive practices.

B. Full and Non-Misleading Descriptions. NOPR, ¶¶47-58.

The FCC clearly has jurisdiction over the method by which interexchange carriers describe their services and identify themselves on customer bills. We urge the FCC to act promptly in this area. NASUCA shares the concern over the ever-increasing number of complaints about changes to the structure of IXC access costs from LECs and of supporting universal service mechanisms. NOPR, ¶47. State consumer advocates have also noted that some carriers identify such charges as being federally-mandated, even though they are not. This concern relates not only to billing issues, but also to representations made at the time services are purchased. Requiring accurate descriptions on bills would help to correct consumer misunderstanding about the nature of these charges.

1. Descriptions of Services and Identification of Providers.

Consumer disclosure and labeling policies have a long history in the regulation of competitive markets. The FCC should give priority to any regulatory initiative that would require telecommunications companies to comply with the following minimum provisions:

- It is vital that the customer's bill identify the company that sold the customer the service or item in question. It is insufficient and misleading to list the billing agent, an entity which may be unknown to the customer, who is often unable to provide information about the transaction leading to the charges. Each description of a provider's charge must specifically identify the underlying carrier that engaged in the transaction with the customer, as well as its address and toll-free telephone number, every month.
- Any service billed to the customer must be described using plain and unambiguous

language, in terms that are generally understood by an ordinary customer. No charge may be identified as "miscellaneous" or described by ambiguous terms that may confuse customers or suggest that the service or product is regulated when it is not. The purpose of this provision is to reduce the risk that consumers may be misled into thinking that failure to pay suspect charges may lead to termination when this is not the case, a risk the FCC fully recognizes. NOPR, ¶50.

- NASUCA supports categorizing charges as those which, if unpaid, could result in termination of basic service; however, the terms "deniable" and "undeniable" are not easily understood by average consumers. NOPR, ¶24. A clear disclosure that a consumer's basic service cannot be terminated if non-basic or unregulated charges are unpaid would be preferable.
- The issue of whether customers can be disconnected for failure to pay certain charges appearing on their bill is currently before many state commissions and, as pointed out earlier in our comments, has already been the subject of regulation in many states. It is our position that no customer should be threatened with disconnection or disconnected for the failure to pay a non-basic or unregulated charge, whether interstate or intrastate in nature. We would strongly endorse a prohibition on disconnections of basic service for nonpayment of charges unrelated to that service.

The historical authority of the states to regulate the practice of disconnection and the conditions under which it can occur should not prevent the FCC from taking aggressive action in an area where it deems its jurisdiction to be clear: billing and disclosures by interexchange carriers pursuant to 47 U.S.C.§201(b) where deceptive charges, practices and classifications have become a "problem of national proportion." NOPR, ¶41. NASUCA would support an order by the FCC which would prohibit interexchange carriers from including their unpaid amounts on any disconnection notice issued to a customer which also included unpaid amounts for basic telephone service. The practice of including non-basic or unregulated charges in disconnection notices issued by local exchange companies is not only unfair to consumers, it also perpetuates an "uneven playing field" for some competitors. When one competitor's charges appear on telephone bills and local disconnection notices and those of another competitor do not, the first competitor receives an advantage, as consumers do not distinguish among the types of charges, and in many jurisdictions consumers *can,* in fact, be terminated for nonpayment of any portion of the bill. The threat of termination offers a competitive advantage to businesses that bill through the local telephone company.

NASUCA supports aggressive action by the FCC on this issue as to interstate charges. The FCC should rule that interstate charges cannot be included in any disconnection notice that contains an overdue amount for local exchange services. The FCC should accompany its regulation with a recommendation that the states, which have not already done so, adopt rules prohibiting disconnection of basic local services for nonpayment of any non-basic charges, such as intrastate toll charges, or other unregulated charges. Such actions will further the objectives of both universal service and fair competition pursuant to the 1996 Act.

- We urge the Commission to adopt a rule that requires interexchange carriers to send separate cancellation notices to their customers for nonpayment or other default as defined in their contracts with customers. Interexchange carriers may want to negotiate with local telephone companies to issue this cancellation notice or they may issue them independently. In any case, this approach would not impinge on state jurisdiction, but would simply require that interexchange carriers negotiate by contract how cancellation notices will appear.

2. Description of Charges Resulting from Federal Regulatory Action.

The FCC notes the numerous complaints resulting from line items on telephone bills for access charges and universal service charges. NOPR, ¶¶51-58. NASUCA strongly supports FCC initiatives to address the issue of how customers are informed about such charges at the time of sign-up for toll service, on website pages, and in advertising as well as on customer bills. Many complaints about such charges are also made on the state level. Some interstate telecommunications companies incorrectly represent that specific Universal Service surcharges or access charges are required by the FCC or are otherwise federally-mandated.

The FCC certainly has jurisdiction over these charges and can regulate how they appear on customer bills or are otherwise described so as to prevent customer confusion or deception.

NASUCA is concerned that these charges often overstate the average costs of the billing carrier. The FCC should require carriers to disclose the actual average per line universal service and access charges on the same page as the customer's individual statement of universal service and access charges. Additionally, the FCC should require companies to disclose such charges with certain words and phrases that the FCC determines to be factually correct or not deceptive, the "safe harbor" language, as described in NOPR, ¶ 53.

The burden would then shift to any carrier who failed to use such terms to demonstrate that a reasonable consumer would understand an alternative description. In this way, companies would not be unreasonably restricted from communicating with their customers about these charges or the FCC's actions. This approach would be comparable to that used by the Federal Trade Commission in its Guidelines for the Use of Environmental Marketing Claims, 16 CFR Part 260. The FTC has found that these guidelines have reduced customer confusion and enabled a more targeted enforcement effort to prevent misuse of such common terms as "recyclable", "biodegradable", "ozone friendly", etc. These guidelines provide a "safe harbor" for marketers, but do not prohibit other approaches.

With respect to First Amendment issues, the utility does not have an unfettered right to communicate with its customers under the commercial free speech doctrine. As the United States Supreme Court explained in Central Hudson Gas & Elec. v. Public Service Comm'n, 447 U.S. 557, 563-564 (1980) (fn omitted):

> The First Amendment's concern for commercial speech is based on the informational function of advertising. See First National Bank of Boston

> v. Bellotti, 435 U.S. 765, 783 (1978). Consequently, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it, Friedman v. Rogers, supra, at 13, 15-16; Ohralik v. Ohio State Bar Assn., supra, at 464-465, or commercial speech related to illegal activity, Pittsburgh Press Co. v. Human Relations Comm'n, 413 U.S. 376, 388 (1973).
>
> If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

None of the cases which have involved state regulation of utility bill inserts or communications with the utility's customers have questioned the historical state regulation of bill inserts to require notification of certain customer rights or notices concerning a utility's filings before the state regulatory authority. These traditional regulatory tools are designed to serve broader public purposes, do not regulate the utility's ability to communicate its own messages to the public on controversial public issues, nor do they prevent the state from allocating the costs of certain advertising communications to shareholders. See, e.g., Pacific Gas & Electric, 475 U.S. 1, 38 (1986); Stevens, J. dissent.

3. Other Initiatives that the FCC Should Explore.

The FCC has direct jurisdiction over the marketing and sales practices of providers of interstate services. The FCC should act in the following areas, which go beyond mere disclosure, and enact substantive consumer protection requirements for the sale of deregulated telecommunications services to customers:

- The telecommunications companies should, in the course of telephonic sales and on each telephone bill, clearly and accurately describe all services ordered by the customer and itemize all fees, charges, and surcharges generated by the order. Providers should be prohibited from characterizing a universal service surcharge as a "federally mandated" or "FCC-approved" charge.
- The company should issue a "Terms of Service" document to the customer within 3 days of receiving the customer's authorization to select the provider for any telecommunications service. The Terms of Service document must contain the following information:

  i. Description of all services ordered by the customer;

  ii. An itemization of all charges that will appear on the customer's bill;

  iii. The material terms and conditions of the contractual arrangement with the customer: all fees and charges in addition to the itemized charges noted above; collection procedures; billing dispute rights and remedies; how to contact the provider.

iv. The customer must be provided a right to cancel the contract without penalty if done to the identified address within three business days of receipt of the Terms of Service brochure. This right must be conspicuously printed on the front page of the document.

- The service provider must disclose (and provide to the billing entity) the average cents per minute paid by the customer for any toll service that appears on the customer's monthly bill. This will require a calculation of the total dollars billed to the customer for toll services divided by the minutes billed to the customer for their toll calls by each provider for that billing period. This calculation should include any additional fees or charges imposed by the provider, including any separate fees listed for access charges or universal service fees. This will result in a cents per minute charge that customers can compare among telephone companies, thus enhancing the development of a competitive market. This calculation will appear on each provider's bill page included with the LEC bill as well as any bill issued by a provider directly to a customer.
- Similar to Wisconsin law, the FCC should prohibit a telephone provider from engaging in negative option billing or negative enrollment of telecommunications services.[4] It should

[4] Wisconsin's telecommunications law prohibits misrepresentation and unfair and deceptive practices in the sale of telecommunications services. It also prohibits negative option billing and restricts prize promotions. Wis. Stat. Ann. §100.207.

be the provider's obligation to demonstrate that the customer has affirmatively ordered a service. This is the type of evidence that would be provided to the customer in the investigation of billing errors.

- The telephone service provider who uses a LEC to bill on their behalf should demonstrate their compliance with these rules and provide the internal procedures and documents to the LEC that are designed to demonstrate compliance with these provisions prior to the finalization of the billing and collection contract.

4. Joint State-Federal Initiatives.

Many of the initiatives suggested by the FCC in its NOPR should be coordinated with and undertaken as part of an ongoing dialogue with state regulators and state consumer advocates. Therefore, we recommend that the FCC , NARUC and NASUCA jointly convene a conference at the earliest opportunity to explore these issues and find common ground to move forward. It is our experience that many states would like to move forward to address slamming and cramming activities and a clear FCC directive would establish how far the FCC will go toward consumer protection and where the states should take up the baton. At such a conference the FCC and the states could explore historical consumer protection tools and devise a coordinated attack on unfair and deceptive practices.

V. CONCLUSION.

NASUCA respectfully requests that the Commission consider these Comments and enter its rulemaking order consistent therewith.

Respectfully Submitted,

Kenneth V. Reif

Kenneth V. Reif
Director, Colorado Office of Consumer Counsel
Member, NASUCA
1580 Logan St., S. 610
Denver, CO 80203
(303) 894-2125